

FIRST PRINT

**IRRIGATION LEGISLATION (FREEHOLD TENURES)  
AMENDMENT BILL 1994**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The objects of this Bill are:

- (a) to amend the Crown Lands (Continued Tenures) Act 1989, the Hay Irrigation Act 1902 and the Wentworth Irrigation Act 1890:
- to ensure that substantially the same provisions apply to certain dealings by, or with, the Ministerial Corporation in relation to land within each of the irrigation areas that are subject to those Acts; and
  - to enable an owner of freehold land within an irrigation area to apply to the Ministerial Corporation for the removal of any requirement to seek consent from the Minister as a precondition for dealings with the land; and
- (b) to amend the Crown Lands (Continued Tenures) Act 1989 to remove the statutory prohibitions on corporations and trustees owning land within irrigation areas.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act commences on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision which gives effect to the amendments to the Crown Lands (Continued Tenures) Act 1989 contained in Schedule 1.

**Clause 4** is a formal provision which gives effect to the amendments to the Hay Irrigation Act 1902 contained in Schedule 2.

**Clause 5** is a formal provision which gives effect to the amendments to the Wentworth Irrigation Act 1890 contained in Schedule 3.

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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**SCHEDULE 1—AMENDMENT OF CROWN LANDS (CONTINUED  
TENURES) ACT 1989**

**Application of general transfer restrictions to land in irrigation areas**

Items (3) (a)–(c), (e) and (f) ensure that the general provisions contained in Schedule 3 to the Act relating to dealings with certain Crown lands also apply to land in irrigation areas.

At present, Schedule 3 to the principal Act makes provision for the restriction of dealings with certain holdings of land under the Act by providing that such land cannot be transferred, leased, subleased, assigned or otherwise dealt with without Ministerial consent. Different provisions apply in relation to land in irrigation areas. The amendments will eliminate this differential treatment of land in irrigation areas.

Item (3) (d) transfers into clause 8 of Part 1 certain provisions of clause 10 (2) and (3) of Part 1 relating to Ministerial certificates in relation to irrigation areas. Item (4) makes a consequential amendment to clause 6 of Schedule 4.

**Statutory corporations and trustees**

Items (2) and (5) remove restrictions on dealings by corporations and trustees in relation to land in an irrigation area.

**Savings and transitional provisions**

Items (1) and (6) insert provisions of a savings and transitional nature in the principal Act.

**SCHEDULE 2—AMENDMENT OF HAY IRRIGATION ACT 1902**

**New provisions relating to certain land dealings in irrigation area**

Item (2) inserts a new Part 3 which is modelled on Part 1 of Schedule 3 to the Crown Lands (Continued Tenures) Act 1989 as amended by the proposed Act. Item (1) repeals consequentially section 17A (restrictions as to assigns of holdings). The new provisions will apply to land within the irrigation area that is leased, or in the course of purchase, from the Ministerial Corporation and to freehold land transferred from the Ministerial Corporation before the commencement of the new Part.

**Other amendments**

Items (4) and (5) insert provisions of a savings and transitional nature. In particular, proposed clause 4 of the proposed Fourth Schedule ensures that if certain amendments made to the principal Act by Schedule 3 to the Irrigation Corporations Act 1994 (which substitute "Area" for "irrigation area") commence before the commencement of proposed Part 3, references to the irrigation area in the new Part are to be read as references to the Area.

Item (3) makes an amendment in the nature of statute law revision.

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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**SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION ACT 1890**

**New provisions relating to certain land dealings in irrigation area**

Item (3) inserts a new Part 3 which is modelled on Part 1 of Schedule 3 to the Crown Lands (Continued Tenures) Act 1989 as amended by the proposed Act. Item (2) repeals consequentially section 22A (restrictions as to assigns of holdings). The new provisions will apply to land within the irrigation area that is leased, or in the course of purchase, from the Ministerial Corporation and to freehold land transferred from the Ministerial Corporation before the commencement of the new Part.

**Other amendments**

Items (5) and (7) insert provisions of a savings and transitional nature. In particular, proposed clause 4 of proposed Schedule 3 ensures that if certain amendments made to the principal Act by Schedule 3 to the Irrigation Corporations Act 1994 (which substitute "Area" for "irrigation area") commence before the commencement of proposed Part 3, references to the irrigation area in the new Part are to be read as references to the Area.

Items (1), (4) and (6) make amendments in the nature of statute law revision.

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**IRRIGATION LEGISLATION (FREEHOLD TENURES)  
AMENDMENT BILL 1994**

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**TABLE OF PROVISIONS**

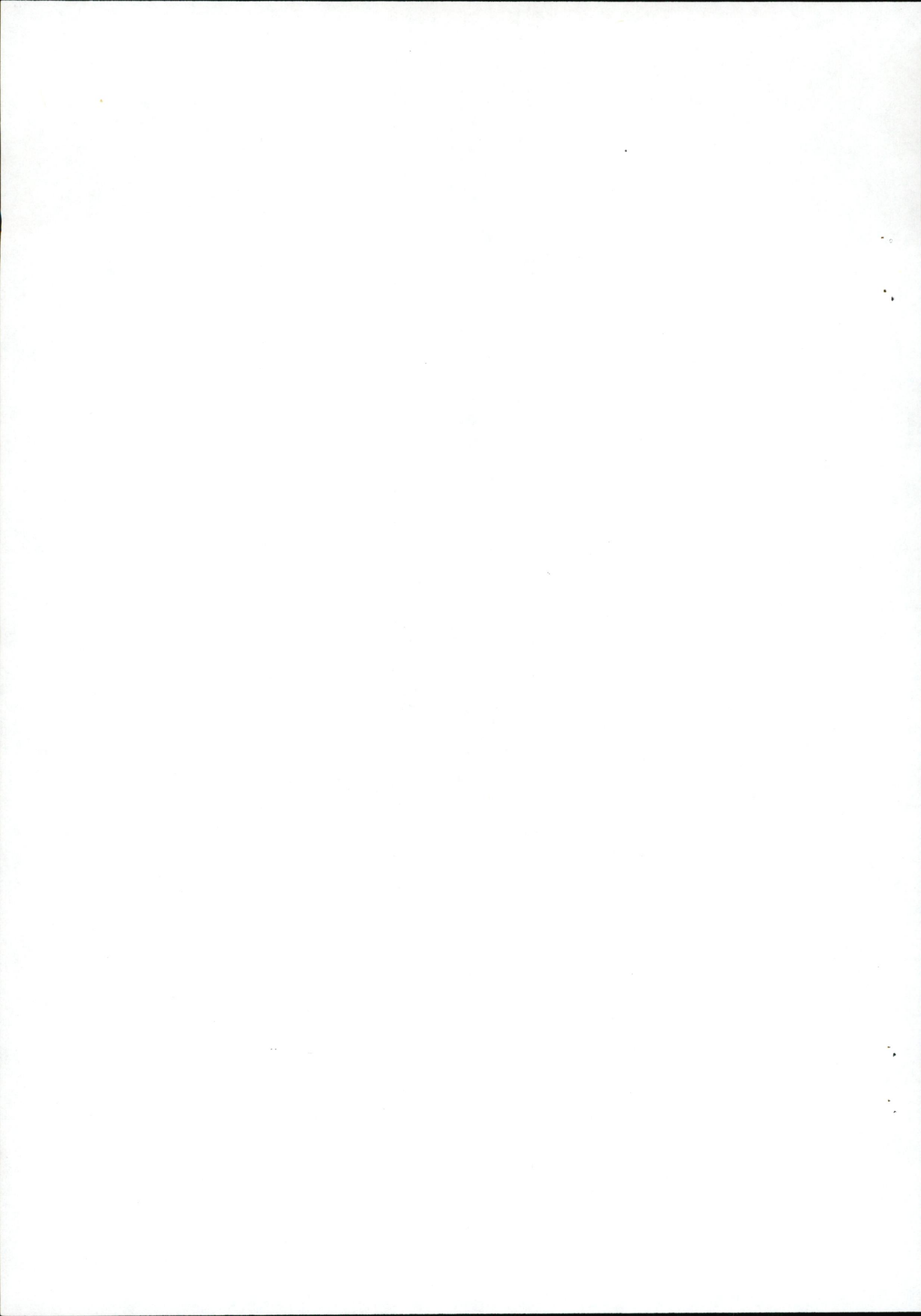
1. Short title
2. Commencement
3. Amendment of Crown Lands (Continued Tenures) Act 1989 No. 7
4. Amendment of Hay Irrigation Act 1902 No. 57
5. Amendment of Wentworth Irrigation Act 1890 54 Vic. No. 7

SCHEDULE 1—AMENDMENT OF CROWN LANDS (CONTINUED TENURES)  
ACT 1989

SCHEDULE 2—AMENDMENT OF HAY IRRIGATION ACT 1902

SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION ACT 1890

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**IRRIGATION LEGISLATION (FREEHOLD TENURES)  
AMENDMENT BILL 1994**

NEW SOUTH WALES



No. , 1994

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**A BILL FOR**

An Act to amend the Crown Lands (Continued Tenures) Act 1989, the Hay Irrigation Act 1902 and the Wentworth Irrigation Act 1890 to provide a mechanism for the removal of restrictions on the transfer of freehold land in irrigation areas; and for other purposes.

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*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Irrigation Legislation (Freehold Tenures) Amendment Act 1994.

5 **Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Crown Lands (Continued Tenures) Act 1989 No. 7**

10 3. The Crown Lands (Continued Tenures) Act 1989 is amended as set out in Schedule 1.

**Amendment of Hay Irrigation Act 1902 No. 57**

4. The Hay Irrigation Act 1902 is amended as set out in Schedule 2.

**Amendment of Wentworth Irrigation Act 1890 54 Vic. No. 7**

15 5. The Wentworth Irrigation Act 1890 is amended as set out in Schedule 3.

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**SCHEDULE 1—AMENDMENT OF CROWN LANDS  
(CONTINUED TENURES) ACT 1989**

(Sec. 3)

(1) Section 19:

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After section 18, insert:

**Savings and transitional provisions**

19. Schedule 8 has effect.

(2) Schedule 2 (**Provisions applicable to continued tenures etc.**):

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(a) Omit clause 8 of Part 1.

(b) Omit clause 7 of Part 2.



*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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SCHEDULE 1—AMENDMENT OF CROWN LANDS  
(CONTINUED TENURES) ACT 1989—*continued*

(3) Schedule 3 (**Transfer restrictions**):

- (a) From clause 2 (2) (b) of Part 1, omit “(other than an incomplete purchase in an irrigation area)”. 5
- (b) From clause 2 (2) (c) of Part 1, omit “(other than land in an irrigation area)”.
- (c) From clause 8 (1) of Part 1, omit “(other than land in an irrigation area)”.
- (d) After clause 8 (2) of Part 1, insert: 10
- (2A) Such a certificate may also be issued by the Minister if:
- (a) the land was formerly comprised in an irrigation farm purchase or in an incomplete purchase under this Act of land comprised in an irrigation farm lease; and 15
- (b) the land does not exceed 2 hectares in area.
- (2B) Such a certificate may also be issued by the Minister if:
- (a) the land was formerly comprised in a non-irrigable purchase or in an incomplete purchase under this Act of land comprised in a non-irrigable lease; and 20
- (b) the land is, in the opinion of the Minister, primarily suitable for residential, commercial, industrial or business purposes; and 25
- (c) the land is declared by the Minister, by notification published in the Gazette, to be non-farming land.
- (e) Omit clause 10 of Part 1.
- (f) From clause 2 (2) (b) of Part 2, omit “(other than land in an irrigation area)”. 30

(4) Schedule 4 (**Subdivision of holdings**):

From clause 6, omit “clause 10”, insert instead “clause 8”.

(5) Schedule 7, Part 2 (**Purchase of land in an irrigation area**):

Omit clause 7. 35

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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SCHEDULE 1—AMENDMENT OF CROWN LANDS  
(CONTINUED TENURES) ACT 1989—*continued*

(6) Schedule 8:

After Schedule 7, insert:

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**SCHEDULE 8—SAVINGS AND TRANSITIONAL  
PROVISIONS**

(Sec. 19)

**PART 1—GENERAL**

**Savings and transitional regulations**

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1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Irrigation Legislation (Freehold Tenures) Amendment Act 1994.

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(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

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(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

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**PART 2—PROVISIONS CONSEQUENT ON  
ENACTMENT OF THE IRRIGATION  
LEGISLATION (FREEHOLD TENURES)  
AMENDMENT ACT 1994**

**Definition**

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2. In this Part:

“**amending Act**” means the Irrigation Legislation (Freehold Tenures) Amendment Act 1994.

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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**SCHEDULE 1—AMENDMENT OF CROWN LANDS  
(CONTINUED TENURES) ACT 1989—continued**

**Applications for removal of certain restrictions on transfer**

3. An application for a certificate from the Minister made under clause 10 of Part 1 of Schedule 3 which has not been determined immediately before the repeal of that clause by Schedule 1 (3) to the amending Act is taken to be an application made under clause 8 of Part 1 as amended by Schedule 1 (3) of the amending Act. 5  
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**SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902**

(Sec. 4)

(1) Section 17A (**Restrictions as to assigns of holdings**):  
Omit the section. 15

(2) Part 3:

Before section 29, insert:

**PART 3—TRANSFER RESTRICTIONS**

**Application of Part**

28A. This Part applies to the following land: 20

(a) a lease from the Ministerial Corporation of land within the irrigation area;

(b) land within the irrigation area in course of purchase in fee-simple from the Ministerial Corporation;

(c) land within the irrigation area, the fee-simple of which was transferred from the Ministerial Corporation before the commencement of this Part. 25

**Consent to transfer**

28B. (1) Land to which this Part applies may not be transferred, leased, subleased, assigned or otherwise dealt with without the written consent of the Ministerial Corporation. 30

SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued*

(2) Subsection (1) does not apply to:

- 5 (a) a mortgage or discharge of mortgage; or
- (b) a lease of the whole or part of land the fee-simple  
of which has been transferred from the Ministerial  
Corporation; or
- 10 (c) a transfer of land to a Minister on behalf of the  
Crown or to a public authority in course of  
purchase in fee-simple from the Ministerial  
Corporation; or
- (d) a transfer of land to a Minister on behalf of the  
Crown or to a public authority the fee-simple of  
which has been transferred from the Ministerial  
15 Corporation; or
- (e) a transfer to a Minister on behalf of the Crown or  
to a public authority of a lease of land from the  
Ministerial Corporation.

(3) In this section:

20 “public authority” means:

- (a) a council as defined in the Local Government  
Act 1993; or
- 25 (b) a public body declared by the Minister, by  
order published in the Gazette, to be a public  
authority for the purposes of this section.

**Invalidation of certain dealings**

28C. A transfer, lease, sublease, assignment or other  
dealing in contravention of this Part is not valid for any  
purpose.

30 **Application for consent**

28D. An application for consent is to be made as  
prescribed by the regulations.

**Dealing with applications**

35 28E. (1) The Ministerial Corporation has discretion to  
give or refuse consent to a dealing with land to which this  
Part applies.

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued*

(2) The Ministerial Corporation may not consent to a dealing unless and until the Ministerial Corporation is satisfied that:

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(a) the whole of any money due to the Minister or the Ministerial Corporation in respect of the land the subject of the dealing, or such portion of that sum as may be required to be paid by the Minister or the Ministerial Corporation, has been paid; and

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(b) the proposed transferee or assignee:

(i) has signed an agreement that all money (if any) remaining owing to the Minister or Ministerial Corporation in respect of the land is to be paid by that person and that the person will execute such security for the payment of all money owing to the Ministerial Corporation as the Ministerial Corporation may require or to the Minister as the Minister may require; and

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(ii) has executed such security.

(3) The Ministerial Corporation may not consent to a dealing if, in the Ministerial Corporation's opinion, the dealing will result in any one person holding an area of land that is substantially in excess of a home maintenance area.

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(4) Subsection (3) does not prevent the Ministerial Corporation consenting to a dealing if:

(a) the dealing is required by a court order; or

(b) the parcel of land involved is a small holding; or

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(c) the land is land referred to in subsection (5) and the Ministerial Corporation is of the opinion that the dealing would be in the best interests of land utilisation even though it would result in the proposed transferee holding substantially more than a home maintenance area; or

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*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued*

- 5 (d) the land is of a class prescribed by the regulations  
or is to be used for a purpose prescribed by the  
regulations.
- (5) The land referred to in this subsection is land that, in  
the opinion of the Ministerial Corporation:
- 10 (a) has, as its best practicable use, and is required for,  
the exploitation of its timber or its reafforestation  
for the production of commercial timber; or
- (b) is required in order to establish, maintain, expand  
or develop an industry; or
- (c) is required for any special purpose approved by the  
Ministerial Corporation; or
- 15 (d) is of inferior character, or is rough or undeveloped,  
or has poor access or other disadvantage, and the  
dealing is the best practicable way of ensuring its  
development; or
- (e) cannot reasonably be disposed of otherwise than by  
20 the proposed dealing.
- (6) In determining whether an area of land is or is not  
substantially in excess of a home maintenance area, the  
Ministerial Corporation:
- 25 (a) must not take into account any land held under a  
lease then having less than 5 years to run (unless  
the lease confers a right to purchase the freehold);  
and
- (b) if the proposed transferee's spouse holds land—  
30 must take that land into account as if it were held  
by the proposed transferee.
- (7) In this section:
- 35 **“home maintenance area”** means an area which, when  
used for the purpose for which it is reasonably fitted,  
would be sufficient for the maintenance in average  
seasons and circumstances of an average family.

SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued*

**Restrictions on exercise of mortgagee's powers**

28F. (1) A mortgagee who exercises a power to enter into possession of mortgaged land may hold the land for 3 years or such longer period as the Ministerial Corporation approves. 5

(2) A mortgagee may not, without the Ministerial Corporation's consent:

(a) enter into possession of the same mortgaged land more than once; or 10

(b) obtain an order for foreclosure.

(3) A dealing with land by a mortgagee as such is subject to any other provision of this Part.

(4) If a mortgagee who has entered into possession of mortgaged land does not, during the period for which the mortgagee is entitled to hold the land, transfer the land or obtain an order for foreclosure: 15

(a) the estate or interest of the mortgagee and any other person in the land may be forfeited to the Crown; or 20

(b) if the land is land from which the Ministerial Corporation may, under this Part, remove restrictions on a transfer or other dealing, the Ministerial Corporation may certify that this Part has ceased to apply to the land. 25

(5) If the Ministerial Corporation gives a certificate under subsection (4) (b):

(a) the mortgagee becomes liable to pay to the Crown any amount that would have been payable had the holder of the land applied for a certificate under this Part dispensing with the Ministerial Corporation's consent to a transfer of the land; and 30

(b) the amount is payable not later than 3 months after demand for the payment is made. 35

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SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued*

**Devolution under a will or on intestacy**

5 28G. (1) A person on whom land to which this Part applies devolves under a will or on intestacy may hold the land for 3 years, or such longer period as the Ministerial Corporation approves, after the death of the testator or intestate.

10 (2) If the person does not, within that period, sell the land or obtain the Ministerial Corporation's consent to hold the land:

- 15 (a) the estate or interest of that and any other person in the land may be forfeited to the Crown; or
- (b) if the land is land from which the Ministerial Corporation may, under this Part, remove the transfer restrictions, the Ministerial Corporation may certify that this Part has ceased to apply to the land.

20 (3) If the Ministerial Corporation gives a certificate under subsection (2) (b):

- 25 (a) the holder of the land is liable to pay to the Crown any amount that would have been payable had the holder applied for a certificate dispensing with the Ministerial Corporation's consent to a transfer of the land; and

(b) that amount is payable not later than 3 months after demand for the payment is made.

(4) Any dealing with the land under this section is subject to the other provisions of this Part.

30 (5) Section 28E applies to an application under subsection (2) for the Ministerial Corporation's consent to hold land in the same way as it applies to an application for consent to a dealing.

**Removal of restrictions**

35 28H. (1) A holder of land to which this Part applies may apply to the Ministerial Corporation for the issue of a



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SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued*

certificate that the land may be transferred, leased, subleased, assigned or otherwise dealt with without the consent of the Ministerial Corporation. 5

(2) Such a certificate may be issued by the Ministerial Corporation if the fee simple of the land has been transferred from the Ministerial Corporation and:

- (a) the land does not exceed 2 hectares in area; or
- (b) an amount equivalent to 3 per cent of the land value of the land (as shown in a current notice of valuation issued by the Valuer-General under section 28I) is paid to the Crown. 10

(3) The Ministerial Corporation is to deduct from the amount referred to in subsection (2) any fee paid by the applicant to the Valuer-General in respect of the notice of valuation. 15

(4) If the Ministerial Corporation issues a certificate under this section in respect of any land, the Ministerial Corporation's consent is not required to any subsequent transfer, lease, sublease or assignment of, or other dealing with, the land. 20

(5) The effect of the issue of a certificate is to be recorded by the Registrar-General in the Register kept under the Real Property Act 1900. 25

(6) In this section:

“holder” includes a mortgagee in possession.

**Valuation of land**

28I. (1) In this section:

“holder” includes a mortgagee in possession; 30

“land value” has the same meaning as it has in the Valuation of Land Act 1916.

(2) On application, the Valuer-General:

- (a) is to determine (as at the date on which the application is made) the land value of any land to which this Part applies; and 35

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SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued*

5 (b) is to issue to the applicant (and, if the applicant is not the holder, to the holder) a notice of the valuation.

10 (3) The provisions of Parts 3 (notices and objections) and 4 (appeals to the Land and Environment Court) of the Valuation of Land Act 1916 apply to a valuation under this section in the same way as they apply to a valuation under that Act.

(4) A reference in Part 3 of the Valuation of Land Act 1916 to the owner of a freehold estate includes, for the purposes of this section, a reference to a holder of land to which this Part applies.

15 (5) A notice of valuation remains current for a period of 1 year from the date of issue or for such other period as may be prescribed by the regulations.

20 (6) If an objection is lodged, the period referred to in subsection (5) commences from the date on which the objection is finally dealt with.

(7) Except as provided by this section, the Valuation of Land Act 1916 (section 79 excepted) does not apply to a valuation under this section.

25 (8) A determination of land value under this section may be used for the purposes of this Part only.

(9) An applicant for a determination of land value under this section is to pay to the Valuer-General such fees as may be prescribed.

30 (3) Part 4, heading:

Before section 29, insert:

**PART 4—MISCELLANEOUS**

(4) Section 28J:

Before section 29, insert:

**Savings and transitional provisions—Fourth Schedule**

35 28J. The Fourth Schedule has effect.

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued*

(5) Fourth Schedule:

At the end of the Act, insert:

**FOURTH SCHEDULE—SAVINGS AND  
TRANSITIONAL PROVISIONS** 5

(Sec. 28J)

**PART 1—GENERAL**

**Savings and transitional regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 10

Irrigation Legislation (Freehold Tenures) Amendment Act 1994.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day. 15

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as: 20

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or 25

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENT ON  
ENACTMENT OF IRRIGATION LEGISLATION  
(FREEHOLD TENURES) AMENDMENT ACT 1994** 30

**Definition**

2. In this Part:

“**amending Act**” means the Irrigation Legislation (Freehold Tenures) Amendment Act 1994. 35

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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**SCHEDULE 2—AMENDMENT OF HAY IRRIGATION  
ACT 1902—*continued***

**Applications for removal of transfer restrictions**

5           3. An application for consent made under section 17A that has not been determined immediately before the repeal of that section by Schedule 2 (1) to the amending Act is taken to be an application made under Part 3 as inserted by Schedule 2 (2) to the amending Act.

**References to the irrigation area**

10           4. On and from the commencement of item (5) of the amendments to this Act made by Schedule 3 to the Irrigation Corporations Act 1994, a reference in Part 3 of this Act to the irrigation area is to be read as a reference to the Area.

15           **SCHEDULE 3—AMENDMENT OF WENTWORTH  
IRRIGATION ACT 1890**

(Sec. 5)

(1) Preamble:

Omit “the Schedule”, insert instead “Schedule 1”.

20           (2) Section 22A (**Restrictions as to assigns of holdings**):

Omit the section.

(3) Part 3:

Before section 33, insert:

**PART 3—TRANSFER RESTRICTIONS**

25           **Application of Part**

32A. This Part applies to the following land:

- 30           (a) a lease from the Ministerial Corporation of land within the irrigation area;
- (b) land within the irrigation area in course of purchase in fee-simple from the Ministerial Corporation;
- (c) land within the irrigation area, the fee-simple of which was transferred from the Ministerial Corporation before the commencement of this Part.

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SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
ACT 1890—*continued*

**Consent to transfer**

32B. (1) Land to which this Part applies may not be transferred, leased, subleased, assigned or otherwise dealt with without the written consent of the Ministerial Corporation. 5

(2) Subsection (1) does not apply to:

- (a) a mortgage or discharge of mortgage; or
- (b) a lease of the whole or part of land the fee-simple of which has been transferred from the Ministerial Corporation; or 10
- (c) a transfer of land to a Minister on behalf of the Crown or to a public authority in course of purchase in fee-simple from the Ministerial Corporation; or 15
- (d) a transfer of land to a Minister on behalf of the Crown or to a public authority the fee-simple of which has been transferred from the Ministerial Corporation; or 20
- (e) a transfer to a Minister on behalf of the Crown or to a public authority of a lease of land from the Ministerial Corporation.

(3) In this section:

“public authority” means:

- (a) a council as defined in the Local Government Act 1993; or
- (b) a public body declared by the Minister, by order published in the Gazette, to be a public authority for the purposes of this section. 25 30

**Invalidation of certain dealings**

32C. A transfer, lease, sublease, assignment or other dealing in contravention of this Part is not valid for any purpose.

**Application for consent**

32D. An application for consent is to be made as prescribed by the regulations. 35

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SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
ACT 1890—*continued*

**Dealing with applications**

5 32E. (1) The Ministerial Corporation has discretion to give or refuse consent to a dealing with land to which this Part applies.

(2) The Ministerial Corporation may not consent to a dealing unless and until the Ministerial Corporation is satisfied that:

10 (a) the whole of any money due to the Minister or the Ministerial Corporation in respect of the land the subject of the dealing, or such portion of that sum as may be required to be paid by the Minister or the Ministerial Corporation, has been paid; and

15 (b) the proposed transferee or assignee:

(i) has signed an agreement that all money (if any) remaining owing to the Minister or Ministerial Corporation in respect of the land is to be paid by that person and that the person will execute such security for the payment of all money owing to the Ministerial Corporation as the Ministerial Corporation may require or to the Minister as the Minister may require; and

25 (ii) has executed such security.

(3) The Ministerial Corporation may not consent to a dealing if, in the Ministerial Corporation's opinion, the dealing will result in any one person holding an area of land that is substantially in excess of a home maintenance area.

30 (4) Subsection (3) does not prevent the Ministerial Corporation consenting to a dealing if:

(a) the dealing is required by a court order; or

(b) the parcel of land involved is a small holding; or

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SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
ACT 1890—*continued*

- (c) the land is land referred to in subsection (5) and the Ministerial Corporation is of the opinion that the dealing would be in the best interests of land utilisation even though it would result in the proposed transferee holding substantially more than a home maintenance area; or 5
- (d) the land is of a class prescribed by the regulations or is to be used for a purpose prescribed by the regulations. 10
- (5) The land referred to in this subsection is land that, in the opinion of the Ministerial Corporation:
- (a) has, as its best practicable use, and is required for, the exploitation of its timber or its reforestation for the production of commercial timber; or 15
- (b) is required in order to establish, maintain, expand or develop an industry; or
- (c) is required for any special purpose approved by the Ministerial Corporation; or 20
- (d) is of inferior character, or is rough or undeveloped, or has poor access or other disadvantage, and the dealing is the best practicable way of ensuring its development; or
- (e) cannot reasonably be disposed of otherwise than by the proposed dealing. 25
- (6) In determining whether an area of land is or is not substantially in excess of a home maintenance area, the Ministerial Corporation:
- (a) must not take into account any land held under a lease then having less than 5 years to run (unless the lease confers a right to purchase the freehold); and 30
- (b) if the proposed transferee's spouse holds land— must take that land into account as if it were held by the proposed transferee. 35

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SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
ACT 1890—*continued*

(7) In this section:

5           “**home maintenance area**” means an area which, when  
used for the purpose for which it is reasonably fitted,  
would be sufficient for the maintenance in average  
seasons and circumstances of an average family.

**Restrictions on exercise of mortgagee’s powers**

10           32F. (1) A mortgagee who exercises a power to enter  
into possession of mortgaged land may hold the land for 3  
years or such longer period as the Ministerial Corporation  
approves.

(2) A mortgagee may not, without the Ministerial  
Corporation’s consent:

15           (a) enter into possession of the same mortgaged land  
more than once; or

(b) obtain an order for foreclosure.

(3) A dealing with land by a mortgagee as such is  
subject to any other provision of this Part.

20           (4) If a mortgagee who has entered into possession of  
mortgaged land does not, during the period for which the  
mortgagee is entitled to hold the land, transfer the land or  
obtain an order for foreclosure:

25           (a) the estate or interest of the mortgagee and any  
other person in the land may be forfeited to the  
Crown; or

30           (b) if the land is land from which the Ministerial  
Corporation may, under this Part, remove  
restrictions on a transfer or other dealing, the  
Ministerial Corporation may certify that this Part  
has ceased to apply to the land.

(5) If the Ministerial Corporation gives a certificate  
under subsection (4) (b):

35           (a) the mortgagee becomes liable to pay to the Crown  
any amount that would have been payable had the  
holder of the land applied for a certificate under



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SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
ACT 1890—*continued*

- this Part dispensing with the Ministerial Corporation's consent to a transfer of the land; and
- (b) the amount is payable not later than 3 months after demand for the payment is made. 5

**Devolution under a will or on intestacy**

32G. (1) A person on whom land to which this Part applies devolves under a will or on intestacy may hold the land for 3 years, or such longer period as the Ministerial Corporation approves, after the death of the testator or intestate. 10

(2) If the person does not, within that period, sell the land or obtain the Ministerial Corporation's consent to hold the land: 15

- (a) the estate or interest of that and any other person in the land may be forfeited to the Crown; or
- (b) if the land is land from which the Ministerial Corporation may, under this Part, remove the transfer restrictions, the Ministerial Corporation may certify that this Part has ceased to apply to the land. 20

(3) If the Ministerial Corporation gives a certificate under subsection (2) (b):

- (a) the holder of the land is liable to pay to the Crown any amount that would have been payable had the holder applied for a certificate dispensing with the Ministerial Corporation's consent to a transfer of the land; and 25
- (b) that amount is payable not later than 3 months after demand for the payment is made. 30

(4) Any dealing with the land under this section is subject to the other provisions of this Part.

(5) Section 32E applies to an application under subsection (2) for the Ministerial Corporation's consent to hold land in the same way as it applies to an application for consent to a dealing. 35

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
ACT 1890—*continued*

**Removal of restriction**

5           32H. (1) A holder of land to which this Part applies may apply to the Ministerial Corporation for the issue of a certificate that the land may be transferred, leased, subleased, assigned or otherwise dealt with without the consent of the Ministerial Corporation.

10           (2) Such a certificate may be issued by the Ministerial Corporation if the fee simple in the land has been transferred from the Ministerial Corporation and:

- 15           (a) the land does not exceed 2 hectares in area; or  
(b) an amount equivalent to 3 per cent of the land value of the land (as shown in a current notice of valuation issued by the Valuer-General under section 32I) is paid to the Crown.

20           (3) The Ministerial Corporation is to deduct from the amount referred to in subsection (2) any fee paid by the applicant to the Valuer-General in respect of the notice of valuation.

25           (4) If the Ministerial Corporation issues a certificate under this section in respect of any land, the Ministerial Corporation's consent is not required to any subsequent transfer, lease, sublease or assignment of, or other dealing with, the land.

(5) The effect of the issue of a certificate is to be recorded by the Registrar-General in the Register kept under the Real Property Act 1900.

(6) In this section:

30           “holder” includes a mortgagee in possession.

**Valuation of land**

32I. (1) In this section:

“holder” includes a mortgagee in possession;

35           “land value” has the same meaning as it has in the Valuation of Land Act 1916.

*Irrigation Legislation (Freehold Tenures) Amendment 1994*

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SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
ACT 1890—*continued*

- (2) On application, the Valuer-General:
- (a) is to determine (as at the date on which the application is made) the land value of any land to which this Part applies; and 5
- (b) is to issue to the applicant (and, if the applicant is not the holder, to the holder) a notice of the valuation. 10
- (3) The provisions of Parts 3 (notices and objections) and 4 (appeals to the Land and Environment Court) of the Valuation of Land Act 1916 apply to a valuation under this section in the same way as they apply to a valuation under that Act. 10
- (4) A reference in Part 3 of the Valuation of Land Act 1916 to the owner of a freehold estate includes, for the purposes of this section, a reference to a holder of land to which this Part applies. 15
- (5) A notice of valuation remains current for a period of 1 year from the date of issue or for such other period as may be prescribed by the regulations. 20
- (6) If an objection is lodged, the period referred to in subsection (5) commences from the date on which the objection is finally dealt with.
- (7) Except as provided by this section, the Valuation of Land Act 1916 (section 79 excepted) does not apply to a valuation under this section. 25
- (8) A determination of land value under this section may be used for the purposes of this Part only.
- (9) An applicant for a determination of land value under this section is to pay to the Valuer-General such fees as may be prescribed. 30
- (4) Part 4, heading:
- Before section 33, insert:

**PART 4—MISCELLANEOUS**

35

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**SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
ACT 1890—*continued***

(5) Section 32J:

Before section 33, insert:

5

**Savings and transitional provisions—Schedule 3**

32J. Schedule 3 has effect.

(6) The Schedule:

Omit the heading, insert instead:

10

**SCHEDULE 1—LANDS TO WHICH ACT  
APPLIES**

(7) Schedule 3:

(a) At the end of the Act, insert:

**SCHEDULE 3—SAVINGS AND TRANSITIONAL  
PROVISIONS**

15

(Sec. 32J)

**PART 1—GENERAL**

**Savings and transitional regulations**

20

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Irrigation Legislation (Freehold Tenures) Amendment Act 1994.

25

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

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(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

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SCHEDULE 3—AMENDMENT OF WENTWORTH IRRIGATION  
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- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of its publication. 5

**PART 2—PROVISIONS CONSEQUENT ON  
ENACTMENT OF IRRIGATION LEGISLATION  
(FREEHOLD TENURES) AMENDMENT ACT 1994**

**Definition** 10

2. In this Part:

“**amending Act**” means the Irrigation Legislation (Freehold Tenures) Amendment Act 1994.

**Applications for removal of transfer restrictions**

3. An application for consent made under section 22A which has not been determined immediately before the repeal of that section by Schedule 3 (2) to the amending Act is taken to be an application made under Part 3 as inserted by Schedule 3 (3) to the amending Act. 15

**References to the irrigation area** 20

4. On and from the commencement of item (3) of the amendments to this Act made by Schedule 3 to the Irrigation Corporations Act 1994, a reference in Part 3 of this Act to the irrigation area is to be read as a reference to the Area. 25
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